

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Nucentrix Broadband Networks, Inc.	)	File No. EB-02-TS-628
	)	
Operator of Cable Systems in the States of:	)	
	)	
Arkansas, Kansas, Illinois, Missouri,	)	
Oklahoma, and Texas	)	
	)	
Request for Waiver of Section 11.11(a) of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: July 9, 2003****Released: July 14, 2003**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Nucentrix Broadband Networks, Inc. ("Nucentrix") temporary, 36-month waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 55 cable television systems in the six above-captioned states. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.<sup>1</sup>

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.<sup>2</sup> In 1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>3</sup> In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.<sup>4</sup> The

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<sup>1</sup> 47 C.F.R. § 11.11(a).

<sup>2</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations ...." 47 U.S.C. § 544(g).

<sup>3</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

<sup>4</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).<sup>5</sup> However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.<sup>6</sup> In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.<sup>7</sup> The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.<sup>8</sup>

3. On September 26, 2002, Nucentrix filed a request for temporary, 36 month waivers of Section 11.11(a) for 55 small, rural wireless cable television systems operating in the six captioned states. In support of its waiver request, Nucentrix states that these wireless cable systems serve between 53 and 3,997 subscribers. Nucentrix further states that it believes that there are competing cable service providers in each one of its 55 markets and it plans to cease video service operation once its subscribers have been given an opportunity to switch to another video provider. Based on price quotes provided by EAS equipment manufacturers, Nucentrix estimates that it would cost a total of \$250,000 to install EAS equipment at these systems. Nucentrix asserts that the cost of installing EAS equipment at these systems will impose a substantial financial hardship on it and provides financial statements for 1999, 2000 and 2001 in support of this assertion. In addition, Nucentrix submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. Nucentrix also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations and other sources. Finally, Nucentrix believes that it can complete the conversion of its subscribers to other video providers and cease operations within the next 36 months.

4. Based upon our review of the financial data and other information submitted by Nucentrix, we conclude that temporary, 36-month waivers of Section 11.11(a) for the 55 cable television systems are warranted.<sup>9</sup> In particular, we find that the estimated \$250,000 cost of EAS equipment for these cable systems could impose a financial hardship on Nucentrix.

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Order").

<sup>5</sup> *Id.* at 15512-13.

<sup>6</sup> *Id.* at 15516-15518.

<sup>7</sup> *Id.* at 15513.

<sup>8</sup> *Id.* at 15513, n. 59.

<sup>9</sup> The waivers will extend from October 1, 2002, until October 1, 2005. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,<sup>10</sup> Nucentrix Broadband Network, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the 55 cable television systems listed in Attachment A.

6. **IT IS FURTHER ORDERED** that Nucentrix Broadband Networks, Inc. place a copy of these waivers in its system files.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Nucentrix Broadband Network, Inc., Peter D. Shields, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Technical and Public Safety Division  
Enforcement Bureau

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<sup>10</sup> 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

## Attachment A

Nucentrix Broadband Networks, Inc.

**Cable Systems:****Temporary Waiver Granted Until:****Arkansas**

Paragould, Arkansas

October 1, 2005

**Kansas**

Beloit, Kansas

October 1, 2005

Chanute, Kansas

October 1, 2005

Sterling, Kansas

October 1, 2005

Manhattan, Kansas

October 1, 2005

Marion, Kansas

October 1, 2005

Medicine Lodge/Anthony, Kansas

October 1, 2005

**Illinois**

Champaign, Illinois

October 1, 2005

Freeport, Illinois

October 1, 2005

Jacksonville, Illinois

October 1, 2005

Macomb, Illinois

October 1, 2005

McLeansboro, Illinois

October 1, 2005

Olney, Illinois

October 1, 2005

Peoria, Illinois

October 1, 2005

Taylorville, Illinois

October 1, 2005

Vandalia, Illinois

October 1, 2005

**Missouri**

Monroe City, Missouri

October 1, 2005

Montgomery City, Missouri

October 1, 2005

Sikeston, Missouri

October 1, 2005

**Oklahoma**

Ada, Oklahoma

October 1, 2005

Ardmore, Oklahoma

October 1, 2005

Enid, Oklahoma

October 1, 2005

Lawton, Oklahoma

October 1, 2005

Lindsay, Oklahoma

October 1, 2005

McAlester, Oklahoma

October 1, 2005

Muskogee, Oklahoma

October 1, 2005

Stillwater, Oklahoma

October 1, 2005

Tulsa, Oklahoma

October 1, 2005

Watonga, Oklahoma

October 1, 2005

Weatherford, Oklahoma

October 1, 2005

Woodward, Oklahoma

October 1, 2005

**Cable Systems:****Temporary Waiver Granted Until:****Texas**

Abilene, Texas	October 1, 2005
Austin, Texas	October 1, 2005
Corpus Christi, Texas	October 1, 2005
Corsicana, Texas	October 1, 2005
Gainesville, Texas	October 1, 2005
George West, Texas	October 1, 2005
Hamilton, Texas	October 1, 2005
Jourdanton, Texas	October 1, 2005
Kerrville, Texas	October 1, 2005
Kingsville, Texas	October 1, 2005
Laredo, Texas	October 1, 2005
Lubbock, Texas	October 1, 2005
Midland/Odessa, Texas	October 1, 2005
Mt. Pleasant, Texas	October 1, 2005
O'Donnell, Texas	October 1, 2005
Olton, Texas	October 1, 2005
Paris, Texas	October 1, 2005
Ranger, Texas	October 1, 2005
Sherman/Denison, Texas	October 1, 2005
Temple, Texas	October 1, 2005
Texarkana, Texas	October 1, 2005
Uvalde, Texas	October 1, 2005
Waco, Texas	October 1, 2005
Wichita Falls, Texas	October 1, 2005